

## FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

### Specific Facts Showing the Need for Immediate Action

Peach fruit fly, *Bactrocera zonata*, is an insect pest which attacks the fruit of various plants including apple, peach, pear, tomato and citrus. The female punctures host fruit to lay eggs which develop into larvae. The punctures admit decay organisms that may cause tissue breakdown. Larval feeding causes breakdown of fruit tissue. Fruits with egg punctures and larval feeding are generally unfit for human consumption. Pupae may be found in fruit, but normally are found in soil.

Adult peach fruit flies have recently been trapped in the county of Fresno. On May 15, 2006, an adult male peach fruit fly was taken from a trap in the Fresno area of Fresno County. On May 17, 2006, another adult male peach fruit fly was taken from a trap in the Fresno area. On May 18, 2006, two more male adults were taken from traps in the Fresno area. On May 19 and May 20, 2006, one adult male was taken from two separate traps in the Fresno area. The multiple finds of the fly meet the State's and national and international standards that are indicative of an incipient infestation of the fly which requires an emergency quarantine response in the Fresno area of Fresno County.

The Department previously made an emergency amendment to our existing Section 3591.12, Peach Fruit Fly Eradication Area, to include Fresno County in the regulation and that amendment was effective May 18, 2006. The Department's action plan for these types of fruit flies in a commercial agricultural production area requires a quarantine response upon the detection of more than five adult flies within three miles of each other and within a time period equal to one life cycle of the fly. The United States Department of Agriculture's Animal and Plant Health Inspection Service and the Food and Agriculture Organization of the United Nations also accept this standard as the trigger for a quarantine response.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if other states or countries enacted quarantines against California products.

The emergency adoption of this regulation will establish a quarantine area in Fresno and Madera counties consisting of approximately 106 square miles surrounding the peach fruit fly infestation in the Fresno area of Fresno County. To prevent the artificial spread of the fly to noninfested areas in order to protect the California's agricultural industry, it is immediately necessary to regulate movement of hosts which can carry the fly within and from the infested area and surrounding buffer zone. Therefore, it is necessary to adopt Section 3424 on an emergency basis.

The proposed quarantine area for Fresno includes the initial detection sites as the epicenter and a buffer zone which extends approximately 4-1/2 miles in each direction from the epicenter. A buffer zone is necessary because the fly can spread naturally (as well as being spread artificially in infested hosts). The proposed boundary line was drawn jointly by the United States Department of Agriculture, the California Department of Food and Agriculture, and the Fresno and Madera county agricultural commissioners. The proposed quarantine area is considered the minimum area around the initial detection sites which should be regulated to prevent artificial spread of peach fruit fly to noninfested areas.

The immediate implementation of this proposed regulatory action is necessary to prevent the USDA, APHIS from considering the entire state as infested with peach fruit fly, rather than just the current area of Fresno and Madera counties. If this were to occur, there would likely be additional detrimental quarantine requirements directed against California host commodities by the USDA, APHIS and our international trade partners.

These facts and circumstances clearly indicate that the spread of peach fruit fly presents a clear and imminent danger to property and, therefore, constitutes an emergency. The

Department is therefore compelled to take immediate action to mitigate the damage to property and preserve the general welfare.

The effect of this regulation will be to provide authority for the State to perform quarantine activities against *Bactrocera zonata* in Fresno and Madera counties. To prevent spread of the fly to noninfested areas to protect California's agricultural industry, it is necessary to immediately begin quarantine response activities against the fly. Therefore, it is necessary to adopt this regulation as an emergency action.

#### Authority and Reference Citations

Authority: Sections 407 and 5322, Food and Agricultural Code.

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#### Informative Digest

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law provides that the Secretary may establish, maintain, and enforce such quarantine regulations as he deems necessary to circumscribe and exterminate or prevent the spread of pests to protect California's agricultural industry.

Existing law also establishes that the Secretary may establish, maintain, and enforce quarantine regulations as he deems necessary to circumscribe and exterminate or prevent the spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322).

Section 3424. *Bactrocera zonata* Interior Quarantine.

This emergency adoption of Section 3424 will establish a quarantine area of 106 square miles in the Fresno area of Fresno and Madera counties as the area under quarantine for *Bactrocera zonata*, peach fruit fly. The effect of the adoption of this regulation is to provide authority for the State to regulate movement of hosts and possible carriers of peach fruit fly

within and from the area under quarantine to prevent artificial spread of the fly to noninfested areas to protect California's agricultural industry.

#### Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3424 does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the Fresno and Madera county agricultural commissioners requested the changes in the regulation.

#### Cost Estimate

The Department also has determined that the regulation will involve no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, and no costs or savings in federal funding to the State.